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of Bernard L. Madoff Investment Securities LLC and  
the estate of Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION  
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT  
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the  
Substantively Consolidated SIPA Liquidation of  
Bernard L. Madoff Investment Securities LLC  
and the Estate of Bernard L. Madoff,

Plaintiff,

v.

FEDERICO CERETTI, *et al.*

Defendants.

No. 08-01789 (SMB)

SIPA LIQUIDATION

(Substantively Consolidated)

Adv. Pro. No. 09-01161 (SMB)

## **APPLICATION FOR THE ISSUANCE OF LETTER OF REQUEST**

1. Plaintiff, Mr. Irving H. Picard, as trustee (“Trustee”) for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act (“SIPA”), substantively consolidated with the estate of Bernard L. Madoff, through his attorneys, Baker & Hostetler LLP, submits this application for the issuance of a Letter of Request to the Royal Courts of Justice for the examination of United Kingdom resident, Mr. Federico Ceretti.

2. This application is made pursuant to 28 U.S.C. § 1781, this Court’s inherent authority, and in light of the comity between the United States and the United Kingdom. Service will be effected pursuant to the Hague Service Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents (the “Hague Service Convention”), to which the United States and the United Kingdom are signatories.

3. Mr. Ceretti is a foreign citizen and non-party located in London, England. Thus, the Letter of Request provides the only means of compelling discovery from him.

## **FACTUAL BACKGROUND**

### **Madoff’s Ponzi Scheme**

4. Bernard L. Madoff (“Madoff”), through the investment advisory business of BLMIS, conducted a decades-long Ponzi scheme of breathtaking scale. His fraud was sustained by infusions of money from around the globe. In particular, domestic and foreign investment vehicles, colloquially known as “feeder funds,” injected several billions of dollars into his scheme. (Fourth Amended Complaint ¶ 1).

5. Included among these feeder funds were Kingate Global Fund, Ltd., In Liquidation (“Kingate Global”) and Kingate Euro Fund, Ltd., In Liquidation (“Kingate Euro” and together with Kingate Global, the “Kingate Funds”). (*Id.*).

6. Since their inception, the Kingate Funds deposited a combined total of approximately \$1.7 billion with BLMIS and over time withdrew nearly a billion dollars from BLMIS. (*Id.* ¶ 3).

7. The Trustee alleges that these withdrawn funds comprise customer property and constitute avoidable transfers under the United States Bankruptcy Code that the Trustee seeks to recover for equitable distribution. (*Id.* ¶ 248).

8. The Trustee filed the Fourth Amended Complaint on March 17, 2014 in this adversary proceeding, seeking, *inter alia*, to avoid and recover \$926,351,905 in fraudulent transfers made to the Kingate Funds under the Bankruptcy Code, the New York Debtor Creditor Law, and SIPA § 78fff-2(c)(3). (*Id.* ¶ 8).

#### **Mr. Ceretti's Connection to the Kingate Funds**

9. This application concerns the request for documents from, and the examination under oath, of Mr. Ceretti.

10. A majority of the issues and allegations contained in the Fourth Amended Complaint are relevant to Mr. Ceretti and his involvement with the below facts, which give rise to the need for this Request. Mr. Ceretti's knowledge regarding the Kingate Funds and its service providers has been determined based on the Trustee's investigation to date, including the Kingate Funds' interviews of Mr. Ceretti, testimony provided by Mr. Ceretti to third parties, and the review of documents produced to the Trustee.

11. Following an introduction to Madoff by the head of a large feeder fund, Tremont (Bermuda) Limited ("Tremont") (*Id.* ¶ 94), Mr. Ceretti together with his colleague, Mr. Grosso, formed Kingate Global in 1994 in the British Virgin Islands ("BVI"). Kingate Global opened an account with BLMIS that same year. By that time, BLMIS would accept only institutional investors.

12. Mr. Ceretti and Mr. Grosso were sophisticated investment professionals with decades of combined experience in the investment industry.

13. In 1996, Mr. Ceretti and Mr. Grosso created a sub-fund of Kingate Global to attract investments in Deutsche Marks that would then be converted to U.S. currency and deposited with BLMIS. That same year, the sub-fund opened a customer account with BLMIS. In 2000, that sub-fund became a separate BLMIS feeder fund, Kingate Euro, also formed in the BVI, to solicit investments abroad in Euros that would then be converted to U.S. currency and deposited with BLMIS. Kingate Euro assumed the rights to the sub-fund's account with BLMIS. Mr. Ceretti and Mr. Grosso structured the Kingate Funds separately, but they operated relative to BLMIS substantially the same.

14. At the time they formed the Kingate Funds, Mr. Ceretti and Mr. Grosso headed an asset management and investment advisory firm in London called FIM Limited. It was founded by Mr. Grosso in 1981 (*Id.* ¶ 35, 49), but Mr. Ceretti became an equal owner in or about 1986. Mr. Ceretti and Mr. Grosso later co-founded FIM Advisers LLP in London, which succeeded FIM Limited in 2005. (*Id.* ¶¶ 36, 52).

15. Despite having an existing company that could have managed the Kingate Funds, Mr. Ceretti and Mr. Grosso formed a separate management company by the name of Kingate Management Limited ("KML") to act as manager for the Kingate Funds. (*Id.* ¶ 4). KML employees frequently communicated with, and sought advice from, Mr. Ceretti on the management and operation of KML and the Kingate Funds.

16. Tremont was appointed as co-manager with KML for Kingate Global, a relationship that lasted about ten years. (*Id.* ¶ 106).

17. Mr. Ceretti and Mr. Grosso caused KML to enter into a consulting and distribution agreement with the FIM entities. The FIM entities provided marketing, analysis, management,

and consulting services to KML and the Kingate Funds. As a result, much of KML's management responsibilities were delegated to the FIM entities. (*Id.* ¶¶ 5, 46, 51, 112).

18. FIM had a robust due diligence process and marketed itself to the public accordingly. (*Id.* ¶¶ 122-27). In addition to acting as consultant, at least fourteen of FIM's investment funds were invested in the Kingate Funds. The FIM funds' investments in the Kingate Funds required the performance of due diligence on the Kingate Funds and BLMIS. The diligence conducted by FIM is part of the cumulative knowledge that can be imputed to the Kingate Funds via Mr. Ceretti and Mr. Grosso.

19. On Mr. Ceretti's and Mr. Grosso's direction, the Kingate Funds' engaged other service providers for the Kingate Funds, including Citi Hedge Fund Services Limited ("Citi Hedge"), based in Bermuda, as administrator, HSBC Bank Bermuda ("HSBC"), as custodian, and PricewaterhouseCooper ("PWC"), as auditor. (*Id.* ¶ 72, 80).

20. Mr. Ceretti has first-hand knowledge of the flow of the Kingate Funds' assets to and from HSBC, and gave direction as to the movement of those funds to and from BLMIS, or to the Kingate Funds' service providers. Mr. Ceretti also has first-hand knowledge of the roles performed by Citi Hedge and was often the point person to which Citi Hedge's predecessors directed their questions and received approval and instruction. Mr. Ceretti also addressed the concerns about BLMIS raised by Citi Hedge and HSBC in the course of performing their roles.

21. To complete their business enterprise relative to investing with BLMIS, Mr. Ceretti and Mr. Grosso formed estate trusts in Jersey, and shell companies, through which they beneficially owned KML. Through El Praela Trust, and its holding companies, Mr. Ceretti personally received millions of dollars in management fees paid to KML as a result of its work on behalf of the Kingate Funds. (*Id.* ¶ 54, 257).

22. Throughout the Kingate Funds' fourteen years of operation, Mr. Ceretti spoke directly with BLMIS employees, including Frank DiPascali, and met with Madoff. (*Id.* ¶ 101, 102)

23. After Madoff confessed to running a Ponzi scheme in 2008, the Kingate Funds went into winding up proceedings in the BVI and Bermuda. KML also went into a winding up proceeding in Bermuda.

24. Mr. Ceretti was an essential, and dominant, party to the enterprise he and Mr. Grosso engineered to benefit from Madoff's fraud and he has personal knowledge concerning the Kingate Funds, KML, the FIM entities, their trusts and shell companies, all of which is relevant to the allegations in the Trustee's Fourth Amended Complaint and give rise to this Request.

25. For the above reasons, the Trustee believes that the Proposed Letter of Request is just and appropriate, and respectfully requests that the Court issue such Letter of Request to the indicated Judicial Authority.

Dated: New York, New York  
February 16, 2018

Respectfully submitted,

/s/ Gonzalo S. Zeballos

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